

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 10471 of 2002(V)

PETITIONER:

ALPHONSE D., S/O.GEORGE,
PAZHAYA BUILDING, THODIKKADAVU, ANGENGGO,
TRIVANDRUM.

BY ADV. SRI.K.C.ELDHO
SRI.VARGHESE.J.PUNNACHALIL

RESPONDENTS:

1. GOVERNMENT OF KERALA REP.BY CHIEF
SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.
2. SECRETARY TO GOVERNMENT,
FISHERIES DEPARTMENT,GOVERNMENT SECRETARIAT,
TRIVANDRUM.
3. SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF SALES TAX,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. PRADEEP.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 14/11/2007 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 18471 OF 2002 IN OP 10471 OF 2002

DISMISSED

14.11.2007

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE BILL DATED 8.5.2000 FROM SOUTH INDIAN FEDERATION OF FISHERMEN SOCIETY.

EXT.P2 TRUE COPY OF THE RELEVANT PORTION OF THE AMENDMENT VIDE SRO NO. 213/97

EXT.P3 TRUE COPY OF THE GOP NO. 53/00/TD DATED 31.3.2000

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 10471 OF 2002

Dated this the 14th day of November, 2007

JUDGMENT

Petitioner is challenging SRO 291/2000 restricting sales tax exemption granted on sale of outboard motor engines only to apex co-operative societies that too engines of less than 15 HP. Petitioner claims to be an individual fisherman who purchased engine from South Indian Federation of Fishermen Society which charged sales tax as it was not entitled to sales tax exemption. Petitioner's case is that the purpose of SRO is to benefit the fishermen as a whole and therefore denial of exemption for purchase of outboard motor engine by the petitioner is incorrect and arbitrary. I have gone through the counter affidavit and I do not find any substance in the petitioner's grievance because petitioner could have purchased outboard engine from an apex society and availed sales tax exemption. On the other hand, petitioner approached another dealer who was not entitled to sales tax exemption and therefore the dealer rightly charged sales tax on the petitioner. Petitioner's challenge against the notification is not tenable because

petitioner has no case that notification is arbitrary or discriminatory. A notification granting exemption can be challenged on the ground of discrimination or on any other ground only by a similar dealer who is denied exemption. Petitioner is only a customer and it was open to the petitioner to purchase outboard engine from a society exempt from payment of tax. Instead petitioner purchased the engine from another dealer who was liable to pay sales tax which rightly collected tax from the petitioner. Since such dealer has not challenged the denial of exemption to them, petitioner's challenge against denial of exemption is without bona fides and untenable. O.P. is accordingly dismissed.

(C.N. RAMACHANDRAN NAIR)
Judge

